

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ILLINOIS

William Patrick Kirby,)
)
Plaintiff,)
)
vs.) Cause No: 08-229-GPM
)
Union Pacific Railroad Company,)
)
)
SERVE: CT Corporation System)
 208 So. LaSalle St., Ste. 814)
 Chicago, Illinois 60604)
)
Defendant.)

**JURY TRIAL DEMANDED
CLERK TO ISSUE SUMMONS**

COMPLAINT
FELA

COMES NOW Plaintiff, William Patrick Kirby, by and through his attorneys, Holland, Groves, Schneller & Stolze, L.L.C., and for his cause of action against the Defendant, Union Pacific Railroad Company, states:

1. That the Defendant, Union Pacific Railroad Company is now, and was at all times hereinafter mentioned, a railroad corporation duly organized and existing according to law to engage in, and was engaged in, business as a common carrier in interstate commerce in the states of Missouri, Illinois and other states of the Union. That the Union Pacific Railroad Company operates its railroad throughout the territory comprising the United States District Court for the Southern District of Illinois.
2. That at all times hereinafter mentioned, Plaintiff, Pat Kirby, was employed by Defendant, Union Pacific Railroad Company, as a locomotive engineer in furtherance of its

interstate commerce.

3. That at all times hereinafter mentioned, the Plaintiff and the Defendant Union Pacific Railroad Company, were employed and engaged in interstate commerce and by reason thereof their mutual and respective rights and liabilities were governed by a certain Act of Congress, known as the Federal Employer's Liability Act, 45 U.S.C. Section 51-60. That this action is properly venued in this Court under the FELA, Federal Rules of Civil Procedure and local rules and that this Court has jurisdiction pursuant to 28 U.S.C. 1331, Federal Question Jurisdiction.

4. That on or about March 19, 2008, while employed as a Engineer for the Defendant Union Pacific Railroad Company, the train Plaintiff was riding derailed in a most violent fashion at or near Vienna, Illinois (Johnson County), and Plaintiff, Pat Kirby, sustained serious injuries as a result thereof.

5. Plaintiff, Pat Kirby, states that his injuries and damages were due in whole or in part as a result of the negligent acts or omissions of the Defendant in one or more of the following particulars:

- a. Failed to provide Plaintiff with a reasonably safe place to work; or
- b. Failed to provide Plaintiff with reasonably safe equipment; or
- c. Failed to properly construct, inspect, maintain or repair its tracks and right of way; or
- d. Failed to properly inspect, maintain or repair its equipment; or
- f. That the track was owned and controlled by Defendant and the

derailment was such that in the absence of negligence it would not have happened and the doctrine of res ipsa loquitur is invoked; or

- g. Failed to shut down its track when it knew or should have known of the high risk of washouts and damaged track due to heavy rain; or
 - h. Failed to warn of the unsafe condition on its track; or
 - i. Failed to provide a crashworthy locomotive; or
 - e. Failed to warn plaintiff of dangers known to Defendant or that with reasonable inspection, should have been known to defendant; or
 - f. Failed to provide reasonably safe conditions for work; or
 - g. Failed to heed the warnings of its employees regarding the track conditions; or
 - h. Failed to comply with 49 C.F.R. 219.7 in that its locomotive posed unnecessary peril to life or limb which violation constitutes negligence per se; or
 - i. Failed to comply with 49 U.S.C. 20701 and 49 C.F.R. 219.45 in that its locomotive posed unnecessary risk of injury to the train crew which violation constitutes negligence per se; or
 - j. Failed to keep its right of way or property in a reasonably safe condition; or
 - k. Failed to provide reasonably safe methods of work; or
 - l. Failed to follow its own rules and standards for the construction, inspection, maintenance or repair of its track; or
 - m. Failed to comply with Federal Regulations found in the Code of Federal Regulations (C.F.R.), which violations constitute negligence per se.
6. As a result, in whole or in part, of the aforementioned conduct of the

Defendant, Union Pacific Railroad Company, Plaintiff, Pat Kirby, was caused to suffer the following serious, painful, and permanent injuries, to-wit: Plaintiff suffered injuries to his head, neck, shoulders, arms, legs, back and spine and the bones, joints, discs, nerves, blood vessels, ligaments, and adjacent structures, as well as his internal organs; Plaintiff was caused to undergo x-rays and medical treatment and painful tests, including surgery and may in the future be caused to undergo additional surgery. Plaintiff has lost the wages of his employment with Defendant and may in the future lose further such wages and fringe benefits; Plaintiff has expended or obligated himself for necessary and reasonable medical expenses and hospital care and will in the future be caused to expend further such sums. Plaintiff has suffered pain and suffering and will in the future have pain and suffering as a result of Defendant's negligence. Plaintiff's ability to work, labor, and enjoy the normal pursuits of life has been impaired and lessened all to Plaintiff's damage.

WHEREFORE, Plaintiff, Pat Kirby, prays for Judgment against the Defendant, Union Pacific Railroad Company, for a sum fair and reasonable under the circumstances in excess of Five Million Dollars (\$5,000,000.00), together with his costs herein expended.

Holland, Groves, Schneller & Stolze, L.L.C.



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